

UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re:

Betty Lou Danley,

Debtor.

Chapter 7

Case No. 24-12508

TRUSTEE'S OBJECTION TO
EXEMPTIONS

I. TRUSTEE'S OBJECTION TO EXEMPTIONS

The trustee objects to the debtor's claim of exemptions as it pertains to the "House Residence" and "Co-Op Property" as set forth in schedule C (ECF Dkt. #1), copy attached as Exhibit 1.

First, the debtor is not entitled to claim two homestead exemptions under either the federal or Washington State exemption statutes.

Second, 11 U.S.C. §522(b)(2) does not specifically provide for a homestead exemptions in either property.

Third, claiming a 100% interest in an asset as exempt does not allow a debtor to "walk away" with the asset itself and potentially benefit from any post-petition appreciation of it. On the official Schedule C form, the debtor checked the box that would ostensibly exempt from the bankruptcy estate "100% of fair market value, up to any applicable statutory limit" for the two listed properties. Official Form, Schedule C, is problematic because it goes far beyond the written words of any federal or Washington State exemption statute. It therefore is illegal. The Advisory Committee went beyond its authority when it drafted the language the "100% of fair market value, up to any applicable statutory

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1 limit." "On December 1, 2015, the Advisory Committee on Bankruptcy Rules adopted a new Schedule
2 C form. This form allows ... debtors, by checking the appropriate box on the form in the column titled "
3 Amount of the exemption you claim," to exempt from the bankruptcy estate " 100% of fair market value,
4 up to any applicable statutory limit" of certain property." In re Ayobami, 879 F.3d 152, 153 (5th Cir.
5 2018). When Schedule C was amended and adopted to include the added language, it was ostensibly
6 intended to operate as a rule because the use of Official Bankruptcy Forms is required by
7 Fed.R.Bankr.P. 9009. Apparently, it was adopted in part after the Supreme Court made it's decision in
8 Schwab v. Reilly, ___ U.S. ___, 130 S.Ct. 2652, 177 L.Ed.2d 234 (2010) ¹. However, the Rules Enabling
9 Act expressly provides that rules prescribed by the Supreme Court to govern bankruptcy practice "shall
10 not abridge, enlarge, or modify any substantive right." 28 U.S.C. § 2075. That is exactly what the
11 aforementioned language is attempting to do to RCW 6.13.010 and 11 U.S.C. § 522(d)(1). If a rule
12 abridges, enlarges or modifies the rules of decision by which a court will adjudicate a litigant's rights, it
13 is an impermissible "substantive" rule, and "is the very evil against which the Rules Enabling Act's
14 caveat is directed." In re Greene, 223 F.3d 1064, 1071 (9th Cir. 2000). To the extent that any rule
15 abridges, enlarges or modifies a substantive right, it is unlawful. Id. at 1072; see also In re Nat'l Store
16 Fixture Co., 37 B.R. 481, 488 (Bankr. W.D. Mo. 1984) ("There is no authority to promulgate a rule
17 which . . . exceeds the narrow mandate set out in Section 2075.").

21 The Fifth Circuit has expressed the opinion that the Bankruptcy Code does not necessarily
22 entitle the debtor to clear title if the debtor claims an exemption and it goes unchallenged. The Fifth
23 Circuit observed:

24 [W]e note that the Supreme Court has found " questionable" whether " a claim to exempt the full
25 value of the equipment would, if unopposed, entitle [the debtor] to the equipment itself as
26 opposed to a payment equal to the equipment's full value," explaining: Section 541 is clear that

27 ¹ As noted by the Third Circuit, however, the comments by the Supreme Court regarding the 100% language is dicta. In re
Orton, 687 F.3d 612, 618fn1 (3rd Cir. 2012).

1 title to the equipment passed to [the debtor's] estate at the commencement of her case, and § §
2 522(d)(5) and (6) are equally clear that her reclamation right is limited to exempting an interest
3 in the equipment, not the equipment itself. Accordingly, it is far from obvious that the Code
4 would "entitle" [the debtor] to clear title in the equipment even if she claimed as exempt a "full"
5 or "100%" interest in it....

6 Ayobami at 154 – 155. The only statute that allows the debtor to remove property from the estate is the
7 abandonment statute, 11 U.S.C. §554. It provides for mechanisms for the debtor to "walk away" with
8 the asset itself and potentially benefit from any post-petition appreciation.

9 The debtor may only claim a sum certain as exempt. The 100% language does not comport with
10 the Washington State exemption statutes, including for example RCW 6.13.030. Nowhere in the federal
11 or Washington state statute does it state by claiming "100% of fair market value, up to any applicable
12 statutory limit" and, therefore, it is fully exempt. The Third Circuit in In re Orton, 687 F.3d 612,
13 618fn1 (3rd Cir. 2012) has found the 100% of FMV language to be improper:

14 The few courts addressing the effect of claiming as exempt "100% of FMV" of an asset (or
15 similar words) have held that using these phrases either renders the attempted exemption facially
16 defective or invites an evidentiary hearing to determine the fair market value of the asset so that
17 a dollar amount can be assigned to the exemption. They reason that "where the statutory basis
18 for a debtor's claim of exemption provides only for an exemption of an interest in certain
19 property up to a specific dollar amount, the 'value of claimed exemption' must be identified as a
20 monetary value." In re Luckham, 464 B.R. 67, 77 (Bankr.D.Mass.2012); see also Massey v.
21 Pappalardo, 465 B.R. 720 (B.A.P. 1st Cir.2012); In re Stoney, 445 B.R. 543, 552
22 (Bankr.E.D.Va.2011); In re Moore, 442 B.R. 865, 868 (Bankr.N.D.Tex.2010). Thus, in claiming
23 "100% of FMV," based on present interpretations of Schwab, a debtor most likely cannot exempt
24 an asset that is not exemptible in kind such that it is removed from the bankruptcy estate, and
25 only is entitled to exempt the fair market value of the asset as of the date of the petition up to the
26 dollar limit of the relevant exemption.

27 As made clear by the Ninth Circuit:

The homestead exemptions available to the debtors in both of these cases, however, do not
permit the exemption of entire properties, but rather specific dollar amounts. Under 11 U.S.C. §
522(d)(1), the Chappells were entitled to exempt "[t]he debtor's aggregate interest, not to exceed
[\$36,900] in value, in real property." Similarly, the Arizona statute under which Gebhart claimed
his exemption entitles a debtor to a homestead exemption "not exceeding one hundred thousand
dollars in value." ARIZ. REV. STAT. § 33-1101. The Supreme Court recently clarified in
Schwab v. Reilly (In re Reilly), __ U.S. __, 130 S.Ct. 2652, 177 L.Ed.2d 234 (2010), that

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1 exemptions claimed under statutes like these are limited to the dollar value claimed in the
2 exemption. Even when a debtor claims an exemption in an amount that is equal to the full value
3 of the property as stated in the petition and the trustee fails to object, the asset itself remains in
4 the estate, at least if its value at the time of filing is in fact higher than the exemption amount. [4]
Id. at 2661-62, 2666. Instead, what is removed from the estate is an " interest" in the property
equal to the value of the exemption claimed at filing. Id. at 2660.[5]

5 In re Gebhart 621 F.3d 1206, 1210 (9th Cir. 2010); accord In re Aarons, 2023 WL
6 3918393, at *8 (B.A.P. 9th Cir. June 8, 2023).

7 Finally, a homestead exemption claim by the Debtor does not remove the property or the
8 Debtor's interest in a residence that is subject to deeds of trust.

9 III. CONCLUSION

10 Wherefore, the debtor's claim of exemptions in the two parcels of real property should be
11 denied.

12 DATED this 15th day of January, 2025.

13 /s/ Michael P. Klein

14 Michael P. Klein
15 Chapter 7 Trustee

16 CERTIFICATE OF MAILING

17 I certify that on the 15th day of January, 2025 I mailed to the Debtor named above,
18 at the address shown below by first class mail, postage pre-paid, a copy of this TRUSTEE'S
OBJECTION TO EXEMPTIONS:

19 Betty Lou Danley
20 15200 11th Ave NE
Bothell, WA 98011

21 Betty Lou Danley
22 15200 111th Ave NE
23 Bothell, WA 98011

24 Dated: January 15, 2025

25 /s/Michael P. Klein

26 Michael P. Klein
27 Chapter 7 Trustee

TRUSTEE'S OBJECTION TO EXEMPTIONS - 4

MICHAEL P. KLEIN
Chapter 7 Trustee
330 Madison Ave. S., Suite 110
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Debtor 1

Betty Lou Jewley
 First Name Middle Name Last Name

Case number (if known) _____

Part 2: Additional Page

Brief description of the property and line on Schedule A/B that lists this property

Current value of the portion you own

Amount of the exemption you claim

Specific laws that allow exemption

Copy the value from Schedule A/B

Check only one box for each exemption

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit

Brief description: _____

\$ _____

☐ \$ _____Line from _____
Schedule A/B: _____☐ 100% of fair market value, up to any applicable statutory limit